STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

-vs-

RANDALL DOWDY,

Defendant-Appellee.
_____/

Supreme Court No. 140603

Court of Appeals No. 287689

Lower Court No. 08-000249-FH

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DEFENDANT-APPELLEE'S BRIEF IN RESPONSE TO THE ATTORNEY GENERAL'S BRIEF AS AMICUS CURIAE

PROOF OF SERVICE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

I. A DOMICILE IS A PERMANENT RESIDENCE. IF A HOMELESS PERSON HAS A PERMANENT RESIDENCE, THEN THEY ARE NOT HOMELESS.

The Court of Appeals correctly applied basic rules of statutory interpretation to determine that by definition the homeless do not have domiciles. MCL 28.725 requires registration of certain offenders' "residence" or "domicile." MCL 28.725. Domicile is not defined in the statute. "[W]hen a statute fails to internally define terms, we accord those terms their ordinary meaning. . . . Where the undefined term has a unique legal meaning, however, it 'shall be construed and understood according to such peculiar and appropriate meaning.' *People v Flick,* 487 Mich 1, __ (2010). Under such circumstances, it is interpreted "in accordance with its settled meaning in legal dictionaries and at common law." *Id.*

"For 160 years, this Court has defined the term 'domicile" as a person's permanent home." *Cervantes v Farm Bureau General Ins Co,* 478 Mich 934 (2007)(Markman, J (dissenting)). In a long line of cases, this Court has made clear that "the words 'domicile' and 'residence' are treated as synonymous terms. In our statutes relating to voting, eligibility to hold office, taxation, probate and administration of estates, etc., no distinction is pointed out." *Gluc v Klein,* 226 Mich 175, 178 (1924); see also *Wright v Genesee Circuit Judge,* 117 Mich 244, 245(1898); *Reaume & Silloway v Tetzlaff,* 315 Mich 95 (1946). Under these decisions, "Residence means the place where one resides, an abode, a dwelling or habitation, especially a settled or permanent home or domicile. Residence is made up of fact and intention. *There must be the fact of abode, and the intention of remaining.*" *Reaume* at 221.

In cases suggesting "domicile" differs from "residence," the term "domicile" is in fact more – not less – permanent than the term "residence." Thus, "[d] omicile is the place where a person has his home, with no present intention of removing, and to which he intends to return

after going elsewhere for a longer or shorter time." *Hartzler v Radeka,* 265 Mich 451 (1933); *see also Henry v Henry,* 362 Mich 85, 101-102 (1960)("'Domicil[e] . . . [is] that place where a person "has voluntarily fixed his abode . . . not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time."'")

The Attorney General complains that in defining domicile the Court of Appeals failed to consider one sentence of dicta from *Beecher v Common Council,* 114 Mich 228, 230 (1897).[1] What the Court of Appeals did, however, was correctly apply this Court's decisions, both regarding the term domicile and basic principles of statutory construction. The Legislature is not bound by dicta in this Court's decisions. *Donajkowski v Alpena Power Co.,* 460 Mich 243, 261 (1999) (it is "presumptuous to bind the Legislature to that which we do not even bind ourselves"). The statement in *Beecher*, that "every person must have a domicile somewhere," can only be considered dicta,[2] since there was no question that the very wealthy Mr. Beecher, owner of two substantial homes did, in fact, have a domicile. The question in *Beecher* was which of these two residences he "inhabited" for purposes of taxing $304,000 in personal property. Thus, as dicta, it is properly ignored by the courts in determining the definition of "domicile."

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[1] The Attorney General also suggests that the definition of domicile should be determined without regard to legal dictionaries. This position is contrary to that set forth by this Court in *People v Flick, supra.* In addition, Justices Markman and Corrigan, joined by Justice Young, recently used the definitions from Black's Law Dictionary and *Henry v Henry, supra* in their dissenting opinion in *In re Servaas*, 484 Mich 634, 679-680 (2009) to set forth the meaning of domicile as "that place where a man has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning."

[2] "Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved or essential to determination of the case in hand are, however illuminating, but obiter dicta and lack the force of an adjudication." *Hett v Duffy,* 346 Mich 456, 461 (1961)/

The Attorney General then offers a variety of suggestions about where a homeless person could be considered to reside under other statutes both in Michigan and in other states. (AG Brief at 10). None of these are relevant, however, to the question of what the definition of "residence" is in this statute. "When a statute specifically defines a given term, that definition alone controls.[3]" *Kuznar v Raksha Corp,* 481 Mich. 169, 176 (2008).

Moreover, the SORA form cited by the Attorney General at page 12 of their brief only serves to highlight the impossible situation homeless people face when attempting to register as sex offenders in Michigan. Specifically, the form includes the requirement that the person report an "address." The common understanding of the term "address," and certainly the one that ordinary citizens should be viewed as using when they read this form, is a "street address" – the traditional number and street name. A person living in a park, or in similar circumstances, simply does not have an address, and so it would be impossible for them to register. Furthermore, while these scenarios are nothing more than hypotheticals: it is a fact that homeless sex offenders who have attempted to register as "homeless" have been required to provide a street address. Exh 8 to Brief of Amici Curiae Jane Poe et al. (In 2008, "I asked to register as homeless. . . . The police officer told me I could not register as homeless."); *see also Id.* at Exh 6 ("As of July 11, 2008, the Grand rapids Police Department will no longer register sex offenders as 'homeless'. A physical address or location where the sex offender will be living is required in order to register.")

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[3] As counsel pointed out in Appellee's Brief, the definition of residence in SORA is curiously identical to the definition of residence for voting purposes. Counsel would note, however, that the purposes of residence provisions in the statutes are very different. In SORA, the stated purpose is "to monitor" sex offenders by knowing where a person lives. MCL 28.721a. In the voting statutes, the purpose of the residence provisions is to make certain that the person is voting in the correct district – not so the voting authority can find the person on any given day. The Secretary of State's interpretation of the voting statutes, MCL 168.11, must be further viewed in light of the fact that voting is a fundamental right. *Yick Wo v. Hopkins,* 118 US 356, 370, 6 SCt 1064, 30 LEd 220 (1886).

Finally, the Attorney General mischaracterizes the Court of Appeals opinion as a "roadmap" to sex offenders to avoid registration. The Court of Appeals opinion, however, correctly recognizes that under the current statutory scheme, it is impossible for the homeless to comply with the registration provisions of SORA. The solution to that problem is not to have this Court rewrite the statute, but rather for the Legislature to amend the statute as other state legislatures across the country have when confronted by the same issue.

CONCLUSION

Defendant-Appellee asks this Honorable Court to affirm the decision of the Court of Appeals.

Respectfully submitted,

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